

STATE OF CALIFORNIA
CALIFORNIA ENERGY RESOURCES AND DEVELOPMENT COMMISSION

In the Matter of:

Docket No. 01-AFC-19

Sacramento Municipal Utility District's
Application for Certification of the
Cosumnes Power Plant

**NOTIFICATION OF NEED FOR ADDITIONAL TIME TO PREPARE
RESPONSES AND OBJECTION TO CALIFORNIA
ENERGY COMMISSION STAFF DATA REQUESTS
30, 31, 56, 58, 60, 61, 136, 138, 143-146, 149 AND 151**

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STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:]	Docket No.: 01-AFC-19
]	NOTIFICATION OF NEED FOR
Sacramento Municipal Utility District's]	ADDITIONAL TIME AND OBJECTIONS
Application for Certification of the]	TO CALIFORNIA ENERGY
Cosumnes Power Plant]	COMMISSION STAFF'S DATA
]	REQUESTS 30, 31, 58, 56, 60, 61, 136,
]	138, 143-146, 149 AND 151
_____]	

On December 10 Sacramento Municipal Utility District ("SMUD") received California Energy Commission ("Commission") Staff's data requests 1 through 165. SMUD and their consultants are working diligently to respond to most of these requests by January 9, 2001, as specified by Title 20 California Code of Regulations ("Siting Regulations")¹ Section 1716 (f). Commission Staff has verbally acknowledged that some of their requests will take more than thirty days to complete. For requests that require more time for a complete response, the schedule provided in Section II below specifies the expected dates for filing each response. In addition, SMUD is willing to work with Commission Staff to provide information that is reasonably available to SMUD that is relevant to the Application for Certification for the Cosumnes Power Plant ("Application") or reasonably necessary to make a decision on the Application. But, fourteen of Commission Staff's requests ask for information that is either not reasonably available and relevant or necessary to make a decision on the Application.

Thus, in accordance with Siting Regulations Section 1716(f) SMUD hereby gives notice of additional time to respond to the specific requests listed in Section II and objects to data

¹ Sections 1001 et. seq.

requests 30, 31, 56, 58, 60, 61, 136, 138, 143-146, 149 and 151 ("Disputed Requests"). The remainder of this document first describes SMUD's objections to the Disputed Requests and follows with a table of expected filing dates for responses requiring additional time. SMUD has made a concerted effort to specify dates that SMUD and its consultants can actually meet.

I. THE DISPUTED REQUESTS ASK FOR INFORMATION THAT IS NOT REASONABLY AVAILABLE TO SMUD AND RELEVANT TO THE APPLICATION OR NECESSARY TO MAKE A DECISION ON THE APPLICATION

The Warren-Alquist Act² Siting Regulations specify the information SMUD must provide in response to informational requests of other parties. Section 1716(b) states:

Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application.

This regulation governs the informational requirements for the discovery stage of the Commission's proceeding on the Application. First, the information must be "reasonably available" to SMUD. Second, the information requested must also be relevant or reasonably necessary to make a decision on this Application.

The California Environmental Quality Act³ ("CEQA") provides guidance for determining what information is reasonably necessary to make a decision on the Application. CEQA specifies that the information must set forth "a sufficient degree of analysis to provide decision-makers with information which enables them to make decisions which intelligently take account of environmental consequences."⁴ Specifically, the law requires that "[an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an

² Pub. Resources Code, § 25000 et seq.

³ Pub. Resources Code, § 21000 et seq.

⁴ Cal. Code Regs., tit. 14, § 15151.

Environmental Impact Report ("EIR") is to be reviewed in the light of what is reasonably feasible."⁵ Furthermore, CEQA "does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended,"⁶ and it does not require that all experts consulted on the matter agree as to the best methods by which to proceed.⁷

SMUD believes that the information requested in the Disputed Requests does not meet the criteria specified above. The following subsections will describe the requests and specific reasons why the information requested does not apply.

A. Data Requests 30 and 31 Ask for Surveys that Are Not Relevant

Data Request 30 asks for tiger salamander surveys of the pipeline. California Department of Fish and Game (CDFG) protocol for tiger salamander surveys only requires surveys within 5 kilometers of historical habitat. Within 1 kilometer of known breeding sites, CDFG assumes present. Therefore, surveys of the entire pipeline route would not lead to any relevant information. However, surveys will be conducted for that portion of the pipeline route that is within 5 kilometers of the known breeding site. Furthermore, extensive tiger salamander surveys of the Rancho Seco area around the Cosumnes Power Plant site have been completed. Due to the existing survey knowledge a new protocol survey of the plant site area would not lead to additional relevant information and may harm the species. Protocol surveys are somewhat destructive, therefore, they should be avoided if no new information can be obtained. In this case, the additional protocol surveys will not provide any new information.

⁵ Cal. Code Regs., tit. 14, § 15151.

⁶ Cal. Code Regs., tit. 14, § 15204 subd. (a).

⁷ Cal. Code Regs., tit. 14, § 15151.

Data Request 31 asks for surveys along the gas pipeline route for burrowing owls⁸. According to SMUD's biologists burrowing owls occur throughout the area and can occur in these areas at any time. Performing studies along the pipeline route in 2002 will not yield any additional information since burrowing owls could move in or move out of the area between now and pipeline construction. Surveys in January 2003 prior to planned construction in 2003 would provide accurate information that could be used to protect any burrowing owls that have moved into the pipeline construction corridor. Alternatively, seasonal avoidance could be used to avoid all burrowing owl nests. Therefore, for separate reasons SMUD objects to conducting tiger salamander or burrowing owl surveys along the pipeline route at this time.

B. Data Request 56 Fails to Recognize the Extensive Development Along the Gas Pipeline Route and the Current Uncertainty of Timing of Future Construction

Data request 56 asks that all cumulative projects along linear corridors be placed on a map. A list of and locations of cumulative projects is typically obtained from the local jurisdiction, in this case Sacramento County. In the case of the gas pipeline route, the large number of development projects proposed for the south Sacramento area makes obtaining the requested list from Sacramento County difficult, if not impossible. SMUD does not have independent information on current and planned development.

Furthermore, the gas pipeline construction moves quickly, disturbing each section for a short period of time. Any new development along the pipeline may or may not occur at the same time as pipeline construction but determining the exact timing of either construction activity is speculative at this time. SMUD will coordinate construction with the County as the project proceeds and actual construction times can be estimated for the pipeline and any other projects

⁸ The request refers to tiger salamander surveys but the background discusses burrowing owls. SMUD assumes

along the route. Due to the difficulty in obtaining this information regarding cumulative projects from the County and the speculative nature of any cumulative construction impacts at this time, SMUD objects to providing the requested information.

C. Data Requests 58 and 61 Ask Burdensome Information Regarding Zoning that is Not Relevant to SMUD

Data requests 58 and 61 ask for detailed zoning information along the pipeline routes. In many applications for certification this information is provided to show that project's compliance with local ordinances. Responding to this request for detailed mapping along the entire gas pipeline route involves a substantial effort. This effort is not justified for SMUD. According to California Government Code Section 53091, "zoning ordinances of a county or city shall not apply to the location or construction of facilities . . . for the production or generation of electrical energy." Due to this exemption from local zoning, the General Plan and zoning along the gas pipeline has no bearing on SMUD's ability to install an underground gas pipeline and no relevance to the project's ability to comply with the local General Plan or zoning ordinances.

Data request 61(c) asks for existing land uses along the proposed gas pipeline route and the alternative routes. SMUD will provide information on existing land uses along the proposed route but objects to providing additional information for the alternative routes that were considered and rejected in the Application. All of the routes evaluated for the gas pipeline involve miles and miles of route segment. Providing detailed information about the routes no longer under consideration for the gas pipeline would not provide any relevant information about the project proposed by SMUD. Therefore, SMUD partially objects to data request 61(c).

Commission Staff intended to request burrowing owls surveys in data request 31.

D. Data Request 60 Fails to Acknowledge the Detailed Information Provided in the Application that Exceeds the Information Gained from LESA Forms

Commission Staff asks that SMUD complete the California LESA application. The soils and agriculture discussion in the Application, per data adequacy requirements, provides more intensive and detailed review of soil impacts and broader discussion of potential environmental impacts than is required by the LESA process. No land of agricultural significance will be converted due to construction of the Cosumnes Power Plant linear facilities, as restoration of any affected soils to original land use and condition will be conducted after completion of construction activities. The plant site itself resides only on grazing land. Thus, the LESA process is both redundant to the existing process used to satisfy CEC's data adequacy list, and would be otherwise overly burdensome to prepare with little additional benefit gained. Since no additional information would be added, the requested LESA application is not necessary for a decision on the Application nor is it relevant.

E. Data Requests 136 and 138 Ask for Final Design Details and Are Premature

These requests ask for "conceptual design" of the detention basin and grading plans. Notwithstanding the label, the requests ask for a greater level of detail than what was previously provided in the AFC. The requested level of detail is only available upon detailed engineering design such as spillway design discharge, a scour analysis for spillway armoring, and all pipeline and drainage features with proposed contours. As the project progresses such analyses will be performed and provided to Commission Staff during the compliance phase. None of these features -- the spillway design or grading plan -- are items that are subject to discussion on their existence. Any concerns of Commission Staff can be articulated into conditions such that the design addresses Commission Staff's concerns. Then, during compliance Commission Staff will be able to examine the detailed and actual design for these features for satisfaction of their

concerns. For the above stated reasons, SMUD objects to providing this level of detail early in the process.

F. Since the Cosumnes Power Plant is Outside of the Flood Plain, the Detailed Flood Information Requested in 143-146 is Irrelevant

The Application clearly shows that the project is located on property outside of the flood plain. Nonetheless, Commission Staff proceeds to request detailed hydraulic and hydrologic analysis and calculations regarding flooding. Responding to this request would require a substantial effort on SMUD's behalf. Commission Staff seems to be concerned that the Federal Emergency Management Agency ("FEMA") may not have properly analyzed the site. Since FEMA is the current authority on flood mapping, SMUD is inclined to accept and acknowledge FEMA in this area. Therefore, providing additional analysis will not result in any information that is relevant or necessary to make a decision on the Application, and therefore, SMUD objects to these requests.

G. Calculations Showing 100-Year Scour Depth and Extent of Bank Erosion for the Pipeline Requested in 149 has no Legal Basis

Commission Staff requests in 149 a level of analysis that thus far SMUD has not performed for any of its gas pipeline facilities in final design let alone at the permitting stage. Commission Staff requests an estimate of 100-year scour depth and extent of bank erosion with supporting calculations and mitigation measures. The requested level of analysis has no legal basis that SMUD could find in the ten days allowed for objections. Thus SMUD objects to this request as overly burdensome and not leading to information necessary to make a decision on the Application.

H. Data Request 151 Asks for Detailed Water Use Information from Rancho Seco's Past Water Use that Has No Bearing on the Cosumnes Power Plant

Commission Staff requests monthly and yearly water use by Rancho Seco. This type of detailed information is not kept by SMUD in any reasonable format. In order to compile these numbers a SMUD employee would have to spend hundreds of hours going through old boxes and compiling the information. This would be an extensive and burdensome effort if the information was relevant to the Cosumnes Power Plant, but it is not. SMUD is not relying on former use of water by Rancho Seco to show a lack of impacts. SMUD is conducting new analyses of the separate and specific impacts of the Cosumnes Power Plant to show why the project should be permitted. If SMUD can obtain any of this information in a reasonable manner SMUD will provide the information to Commission Staff.

II. SMUD REQUESTS ADDITIONAL TIME TO RESPOND TO COMMISSION STAFF DATA REQUESTS

SMUD has evaluated the sometimes extensive information requested by Commission Staff. In some instances the requested information cannot be provided in 30 days. SMUD has worked with its consultants to provide a realistic schedule for submission of the requested information, which is provided below. Data requests will be filed in groups by the dates specified. All requests not listed below will be filled on January 9, 2002.

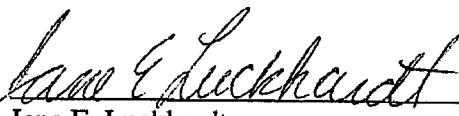
PROJECTED FILING DATE	DATA REQUEST NUMBERS
January 18, 2002	9, 32, 33, 58, 61(c) ⁹ , 73, 74, 83, 84, 94, 107, 133, 134, 135, 139, 141, 142, 154, 155, 157 and 163
February 4, 2002	7, 12, 16, 39-43, 49, 62, 64, 86, 87, 88, 96, 118, 119, 121 and 122
February 20, 2002	22
March 29, 2002	19 and 20
June 7, 2002	18, 29, 30 ¹⁰ and 31 ¹¹

⁹ SMUD will provide existing land use types for the proposed pipeline route only.

III. THE DISPUTED REQUESTS ASK FOR INFORMATION THAT IS IRRELEVANT, UNNECESSARY AND UNAVAILABLE TO SMUD, AND THE REQUESTS LISTED IN THE TABLE ASK FOR INFORMATION THAT WILL TAKE LONGER THAN 30 DAYS TO PREPARE.

For the reasons stated above SMUD objects to the Disputed Requests on the basis that the time spent gathering the requested information is unnecessary because the information is either not relevant to this Application or not necessary to make a decision on the Application. SMUD looks forward to working with Commission Staff to resolve these outstanding issues. SMUD also will work diligently to provide the requests listed in section II above to Commission Staff on or before the dates provided.

Respectfully,


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¹⁰ If any additional tiger salamander surveys are necessary. Tiger salamander surveys will be conducted on the project site.

¹¹ Burrowing owl surveys of the site will be conducted.